

June 1992

**REQUIREMENTS FOR INVITATION FOR BID, NOTICE TO BIDDERS,  
AND STANDARD CONTRACT CLAUSES FOR  
AIRPORTS PROGRAM CONSTRUCTION PROJECTS**

1. The newspaper notice or public advertisement (Invitation for Bid) must include the language contained in "Federal Requirements for Advertising (Invitation for Bid)" (Appendix 1).
2. Information for Sponsor regarding Procurement Standards (Appendix 2).
3. The Notice to Bidders (Instructions to Bidders) must include the language contained in "Information Which Must Be Included in Notice or Instructions to Bidders" (Appendix 3).
4. Specifications must include all of "Standard Federal Contract Clauses and Requirements for Construction Contracts" (Appendix 4) and "Standard Federal Equal Employment Opportunity Requirements for Construction Contracts" (Appendix 5).
5. Bid documents must include the "Bidder's Statement on Previous Contracts Subject to EEO Clause" (Appendix 6), a "Certification of Nonsegregated Facilities" (Appendix 7), and the "Assurance of Disadvantaged Business Enterprise Participation" (Appendix 8).
6. Standard Clause for Solicitations, Contracts and Subcontracts required for 49 CFR Part 29 (Appendix 9).
7. Disadvantaged Business Enterprise (DBE) contract goals (Appendix 10).
8. Foreign Trade Restrictions (Appendix 11).
9. Buy American - Steel and Manufactured Products for construction contracts (Appendix 12).
10. Specifications must also include a current Department of Labor Wage Rate Decision which will be furnished separately.
11. The Notice to Bidders, Bid Documents and Specifications should all be made part of the contract.

**FEDERAL REQUIREMENTS FOR  
ADVERTISING (INVITATION FOR BID)**

Newspaper notice or public advertisement must include the following statements:

1. The proposed contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, and to the Equal Employment Opportunity (EEO) and Federal Labor Provisions.
2. All labor on the project shall be paid no less than the minimum wage rates established by the U.S. Secretary of Labor.
3. Each bidder must supply all the information required by the bid documents and specifications.
4. The EEO requirements, labor provisions and wage rates are included in the specifications and bid documents and are available for inspection at \_\_\_\_\_.  
(indicate office)
5. Each bidder must complete, sign and furnish, prior to award of the contract (\*), the "Bidder's Statement on Previous Contracts Subject to EEO Clause", a "Certification of Nonsegregated Facilities", and the "Assurance of Disadvantaged Business Enterprise Participation" as contained in the Bid Proposal.
6. A contractor having 50 or more employees and his subcontractors having 50 or more employees and who may be awarded a contract of \$50,000 or more will be required to maintain an affirmative action program, the standards for which are contained in the specifications.
7. To be eligible for award, each bidder must comply with the affirmative action requirements which are contained in the specifications.
8. Disadvantaged business enterprises (DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.

Women will be afforded equal opportunity in all areas of employment. However, the employment of women shall not diminish the standards of requirements for the employment of minorities.

9. All solicitations, contracts, and subcontracts resulting from projects funded under the AIP must contain the foreign trade restriction required by 49 CFR Part 30, Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
10. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program.
  - (\*) The sponsor may designate a specific time when the bidder must furnish the required documents, e.g. with the submission of the bid. In such a case, the sponsor should make appropriate revisions throughout the text of this handout wherever a single asterisk appears.

PROCUREMENT STANDARDS FOR CONSTRUCTION  
PROJECTS UNDER THE AIRPORTS PROGRAM

1. General. This material is furnished to provide guidance with regard to provisions required in construction bids and contracts under the Airports Construction Program. It is not intended for use in procurement contracts, such as for crash, fire and rescue equipment nor in owner-removal contracts between sponsors and utility companies for removal or modification, by utility companies, of facilities owned by the companies.
  - a. Advertisement. Contracts for construction work on a project in excess of \$10,000 must be awarded on the basis of public advertisement and competitive bidding. The sponsor, or his authorized agent, shall publish the advertisement at such places and at such times as are required by local law or ordinances. The published advertisement shall state the time and place for submitting sealed proposals; a description of the proposed work; instructions to bidders as to obtaining proposal forms, plans, and specifications; proposal guarantee required; and the sponsor's right to reject any and all bids. All contracts under the Airports Program must meet the requirements of local law, unless there is a conflict with Federal law.
  - b. Open Competitive Bidding. It is the policy of the Federal Aviation Administration (FAA) to ensure open competition to afford a fair opportunity for any qualified contractor to bid on proposed contracts under the Airports Program. Thus, the FAA will not approve nor participate in a contract containing provisions which tend to limit competitive bidding or deprive otherwise qualified contractors of an opportunity to bid.
  - c. Contract Bonus and Escalator Clauses.
    - (1) Contract Bonus. Contracts sometimes provide for payment of a bonus to the contractor for completing construction ahead of schedule when an earlier completion will result in additional income or profit from use of the completed facility. The amount of the bonus is usually related to the amount of additional income or profit anticipated from the earlier completion. However, in the construction of the types of projects normally entered into under the Airports Program, completion of construction ahead of schedule to gain additional income or profit is not an item to be considered in determining reasonableness of construction costs. Therefore, such bonus payments are ineligible.

- (2) Escalator Clauses. Unless otherwise authorized, the FAA will not participate in any costs in a contract that are subject to an escalator clause. Such authorization will only be provided in instances where short-term price fluctuations in the market indicate that expected costs cannot be accurately estimated.

INFORMATION WHICH MUST BE INCLUDED IN  
NOTICE OR INSTRUCTIONS TO BIDDERS

1. This contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, the Federal Labor provisions and the Equal Employment Opportunity (EEO) provisions as contained in the contract, specifications and bid documents.
2. All mechanics and laborers on the project shall be paid no less than the minimum wage rate established by the U.S. Secretary of Labor. A copy of the Department of Labor Wage Rate Determination applicable to this contract is included in the specifications.
3. Each bidder must complete, sign and furnish, prior to award of the contract (\*) the "Bidder's Statement on Previous Contracts Subject to EEO Clause", a "Certification of Nonsegregated Facilities", and the "Assurance of Disadvantaged Business Enterprise Participation", if applicable.
4. Required Notices for All Contracts.
  - a. The bidder must supply all the information required by the proposal forms and specifications.
  - b. The sponsor, in accordance with Title VI of the Civil Rights Act of 1964, hereby notifies all bidders that they must affirmatively insure that in any contract entered into pursuant to this advertisement, the contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21), as they may be amended from time to time.
  - c. The contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds provided under this agreement. In this regard contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts.

5. Required Notices for Contracts Over \$10,000 (See Appendix 5, Paragraph 1 for Affirmative Action Plan Requirements). The regulations and orders of the Secretary of Labor, Office of Federal Contract Compliance Programs (OFCCP) require that the sponsor and/or his contractor(s) include in Invitation For Bids (IFB) or negotiations for contracts over \$10,000 the following notices:

- a. Each bidder will be required to comply with the affirmative action plan for equal employment opportunity prescribed by the OFCCP, United States Department of Labor, Regulations of the Secretary of Labor (41 CFR 60), or by other designated trades used in the performance of the contract and other nonfederally involved contracts in the area geographically defined in the plan.
- b. The proposed contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, and to the EEO clause.
- c. The successful bidder will be required to submit a Certification of Non-segregated Facilities prior to award of the contract, and to notify prospective subcontractors of the requirement for such a certification where the subcontract exceeds \$10,000. Samples of the certification and the notice to subcontractors appear in the specifications.
- d. A bidder must indicate whether he has previously had a contract subject to the EEO clause, whether he has filed all report forms required in such contract, and if not, a compliance report (Standard Form SF 100) must be submitted prior to award of the contract (\*).
- e. EEO and labor provisions, when applicable, are included in the bidding documents of specifications and are available for inspection at the \_\_\_\_\_ appropriate office.
- f. Contractors and subcontractors may satisfy requirements of the EEO contract clause by stating in all solicitations or advertisements for employees that:

"All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin".

or by using a single advertisement in which appears in clearly distinguished type, the phrase:

"an equal opportunity employer".

6. Required Notice for Contracts with 50 or More Employees and a Contract of \$50,000 or More. (See Appendix 5, Paragraph 1 for Affirmative Action Plan Requirements)

The sponsor shall give notice that a contractor having 50 or more employees and first tier subcontractors having 50 or more employees and who may be awarded a subcontract of \$50,000 or more will be required to comply with the following.

- a. If the contractor has not submitted a complete and accurate Compliance Report within 12 months preceding the date of award, he must file a Compliance Report (SF 100) within 30 days after award of this contract.
- b. The contractor shall require the subcontractor on any first tier subcontracts to file a SF 100 prior to award of the subcontract if the above conditions apply. A SF 100 will be furnished upon request.

7. Required Notice for Contracts in Excess of \$100,000. Advertisement for bids must include:

The requirement for a bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

8. Bonding Clauses for Construction Contracts and Subcontracts in Excess of \$100,000.

- a. The contractor agrees to furnish a performance bond for 100 percent of the contract price. This bond is one that is executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- b. The contractor agrees to furnish a payment bond for 100 percent of the contract price. This bond is one that is executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**Note:** For contracts for \$100,000 and less, local requirements should be met.

9. Notice to Prospective Contractors of Requirement for Certification of Nonsegregated Facilities:

- a. A certification of Nonsegregated Facilities must be submitted prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- b. Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. **NOTE:** The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES**

- (1) A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- (2) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. **NOTE:** The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

10. Clean Air and Water Pollution Control Requirements for All Construction Contracts and Subcontracts Exceeding \$100,000.

Contractors and subcontractors agree:

- a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended,

33 U.S.C. 1251 et seq., relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

- c. That as a condition for award of a contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- d. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

11. Buy American-Steel and Manufactured Products for Construction Contracts.

- a. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program. The following terms apply:
  - (1) Steel and manufactured products. As used in this clause, steel and manufactured products include (1) steel produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States. Components of foreign origin of the same class or kind as the products referred to in subparagraphs b(1) or (2) shall be treated as domestic.
  - (2) Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.
  - (3) Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.
- b. The successful bidder will be required to assure that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except those-

- (1) that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (2) that the U.S. Department of Transportation has determined, under the Aviation Safety and Capacity Expansion Act of 1990, that domestic preference would be inconsistent with the public interest; or
- (3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

12. Buy American Certificate.

By submitting a bid/proposal under this solicitation, except for those items listed by the contractor below or on a separate and clearly identified attachment to this bid/proposal, the contractor certifies that steel and each manufactured product, is produced in the United States (as defined in the clause Buy American - Steel and Manufactured Products For Construction Contracts) and that components of unknown origin are considered to have been produced or manufactured outside the United States.

Contractors may obtain from (\*\*) lists of articles, materials, and supplies excepted from this provision.

PRODUCT	COUNTRY OF ORIGIN
_____	_____.
_____	_____.
_____	_____.
_____	_____.

(\*\*) Insert Sponsor's name.

STANDARD FEDERAL CONTRACT CLAUSES  
AND REQUIREMENTS FOR CONSTRUCTION CONTRACTS

1. General and Labor Clauses for All Construction Contracts and Subcontracts.

- a. Airport Improvement Program (AIP) Project. The work in this contract is included in the AIP Project No. \_\_\_\_\_ which is being undertaken and accomplished by the (\*\*) in accordance with the terms and conditions of a grant agreement between the (\*\*) and the United States under the Airport and Airway Safety and Capacity Expansion Act of 1987, pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.
- b. Consent to Assignment. The contractor shall obtain the prior written consent of the (\*\*) to any proposed assignment of any interest in or part of this contract.
- c. Convict Labor. No convict labor may be employed under this contract.
- d. Veteran's Preference. In the employment of labor (except in executive, administrative and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
- e. Withholding, Sponsor From Contractor. Whether or not payments or advances to the (\*\*) are withheld or suspended by the FAA, the (\*\*) may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by this contract.
- f. Nonpayment of Wages. If the contractor or subcontractor fails to pay any laborer or mechanic employed or working on the site of the work any of the wages required by this contract the (\*\*) may, after written notice to the

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contractor, take such action as may be necessary to cause the suspension of any further payment or advance of funds until the violations cease.

- g. FAA Inspection and Review. The contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.
- h. Subcontracts. The contractor shall insert in each of his subcontracts the provisions contained in paragraphs a, c, d, e, f, and g of this section, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- i. Contract Termination. A breach of paragraphs f, g, and h of this section may be grounds for termination of the contract.

(\*\*) Insert Sponsor's name.

**NOTE:** Whenever it is known that a construction contract will be entered into prior to the execution of a grant agreement for the work involved, paragraph 1a above should be revised as follows: "which is being undertaken" to "which is to be undertaken;" "grant agreement between" to "grant agreement to be entered in to between;" and "has agreed" to "will agree".

#### 2. Miscellaneous Clause Requirements for All Construction Contracts and Subcontracts Unless Otherwise Indicated.

During the performance of this contract, the contractor, for himself, his assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. Compliance With Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21), as they may be amended from time to time, (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract.

- b. Nondiscrimination. The contractor, with regard to the work performed by him during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to his books, records, accounts, other sources of information and his facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts he has made to obtain the information.
- e. Sanction for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as they or the FAA may determine to be appropriate, including, but not limited to:
  - (1) Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (2) Cancellation, termination, or suspension of the contract in whole or in part.

- f. Incorporation of Provisions. The contractor shall include the provisions of paragraphs a through e in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- g. Breach of Contract Terms - Sanctions. Contracts/subcontracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A sample clause is:  
  
"Any violation or breach of the terms of this contract on the part of the contractor/subcontractor may result in the suspension or termination of this contract, or such other action which may be necessary to enforce the rights of the parties of this agreement."
- h. Contract Termination. (For contracts in excess of \$10,000). This contract may be terminated by the grantee for default or any other conditions or circumstances beyond the control of the contractor. Termination conditions, the manner by which it will be effected and the basis for settlement are as follows: (enumerate conditions applicable to each contract).
- i. Rights to Inventions - Materials. (For contracts or agreements involving imported products, processes, methods, etc.). All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the recipient of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the grantee.

3. Access to Documents, Records, etc., Clauses for Construction Contracts and Subcontracts as Indicated.

a. For All Cost-Reimbursement Type of Contracts, Include:

The Administrator of the FAA and the Comptroller General of the United States, or an authorized representative of either, shall be allowed access to the contractor's records which are pertinent to the contract for the purpose of accounting and audit.

b. For All Negotiated Contracts in Excess of \$10,000 Awarded By a Sponsor, Include a Provision That:

The sponsor, the FAA, the Comptroller General of the United States, or any of their duly authorized representatives, shall be allowed access to any books, documents, papers, and records of the contractor which are directly pertinent to the AIP project for the purpose of making audit, examination, excerpts, and transcriptions.

4. Labor Contract Clauses for All Construction Contracts and Subcontracts in Excess of \$2,000.

a. Minimum Wages.

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to laborers or mechanics, subject to the provisions of subparagraph a(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall

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be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraph d of this clause. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph a(2) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and his subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

- (2) (i) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (A) The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - (B) The classification is utilized in the area by the construction industry; and
  - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days or

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receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215- 0140).

(iii) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (2)(ii) or (iii) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

- b. Withholding. The FAA or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis- Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- c. Payrolls and Basic Records.
- (1) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph a(4) of this clause that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs

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and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1251-0017).

- (2) (i) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph c(1) above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the office Management and Budget under OMB control number 1215-0149).
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph c(1) above and that such information is correct and complete;
  - (B) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3; and
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph c(2)(ii) of this section.

(iv) The falsification of any of the above certifications- may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

- (3) The contractor or subcontractor shall make the records required under paragraph c(1) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and Trainees.

- (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as

to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress,

expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- e. Compliance With Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
- f. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in paragraphs a through j of this contract and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

- g. Contract Termination: Debarment. A breach of the contract clauses in paragraphs a through j of this clause and paragraphs a through e of the fifth clause below may be grounds for termination of the contract, and for the debarment as a contractor and a subcontractor as provided in 29 CRR 5.12.
  - h. Compliance With Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
  - i. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of his subcontractors) and the contracting agency, the U.S. Department of Labor or the employees or their representatives.
  - j. Certification of Eligibility.
    - (1) By entering into this contract, the contractor certifies that neither he nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
5. The following clauses in paragraphs a., b., c., d., and e. below, required by the Contract Work Hours and Safety Standards Act, will also be inserted in full in AIP construction contracts in excess of \$2,000 in addition to the clause required by 29 CFR 5.5(a) or 4.6 of Part 4 of Title 29. As used in the following, the term "laborers" and "mechanics" include watchmen and guards.

- a. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, whichever is greater.
- b. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph a above, the contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph a above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a above.
- c. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph b above.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs a. through d and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs a through d.

#### Appendix 4

- e. Working Conditions. No contractor or subcontractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) issued by the Department of Labor.
6. In addition to the provisions in 4 and 5 above for contracts in excess of \$2,000, the following is to be included in all contracts for work on airport development projects involving labor:

Veteran's Preference. In the employment of labor (except in executive, administrative and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

STANDARD FEDERAL EQUAL EMPLOYMENT  
OPPORTUNITY REQUIREMENTS FOR  
CONSTRUCTION CONTRACTS

1. Required Notices for Contracts Over \$10,000. The regulations and orders of the Secretary of Labor, Office of Federal Contract Compliance Program (OFCCP) require that the sponsor and/or his contractor(s) include in invitation for Bids or negotiations for contracts over \$10,000 the following:

a. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, AS AMENDED).

- (1) The offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- (2) The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

SOUTHERN CALIFORNIA COUNTIES OF:

Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside,  
 San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura

<u>Area Covered</u>	<u>Timetables</u>	<u>Goals (Percent for Minority participation for each trade)</u>	<u>Goals (Percent for Minority Female participation for each trade)</u>
Imperial County	Until further notice	18.2	6.9
Inyo, Mono & San Luis Obispo Counties	"	24.6	6.9
Kern County	"	19.1	6.9
Los Angeles County	"	28.3	6.9
Orange County	"	11.9	6.9

Appendix 5

<u>Area Covered</u>	<u>Timetables</u>	<u>Goals (Percent for Minority participation for each trade</u>	<u>Goals (Percent for Minority Female participation for each trade</u>
Riverside & San Bernardino Counties	Until further Notice	19.0	6.9
Santa Barbara County	"	19.7	6.9
Ventura County	"	21.5	6.9
San Diego	"	16.9	6.9

STATE OF ARIZONA

<u>Area Covered</u>	<u>Timetables</u>	<u>Goals (Percent for Minority participation for each trade</u>	<u>Goals (Percent for Minority Female participation for each trade</u>
Pima County	Until further Notice	24.1	6.9
Cochise, Graham, Greenlee & Santa Cruz	"	27.0	6.9
Maricopa	"	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai & Yuma	"	19.6	6.9

NORTHERN CALIFORNIA COUNTIES OF:

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Toulumne, Yolo and Yuba.

Appendix 5

<u>Area Covered</u>	<u>Timetables</u>	<u>Goals (Percent for Minority participation for each trade</u>	<u>Goals (Percent for Minority Female participation for each trade</u>
Lassen, Modoc, Plumas, Shasta, Siskiyou & Tehama	Until Further notice	6.8	6.9
Del Norte, Humboldt & Trinity	"	6.6	6.9
Alameda, Contra Costa, Marin, San Francisco & San Mateo	"	25.6	6.9
Santa Cruz	"	14.9	6.9
Sonoma	"	9.1	6.9
Alpine, Amador, Calaveras, Mariposa, Merced & Toulumne	"	19.8	6.9
Butte, Colusa, El Dorado, Glenn, Nevada, Sierra, Sutter & Yuba	"	14.3	6.9
Lake, Mendocino & San Benito	"	23.2	6.9
Santa Clara	"	19.6	6.9
Napa & Solano	"	17.1	6.9
Placer, Sacramento & Yolo	"	16.1	6.9
Monterrey	"	28.9	6.9
King, Madera & Tulare	"	23.6	6.9
Fresno	"	26.1	6.9
San Joaquin	"	24.3	6.9
Stanislaus	"	12.3	6.9

State of Nevada  
(With Bordering Utah State Counties)

<u>Area Covered</u>	<u>Timetables</u>	<u>Goals (Percent for Minority participation for each trade</u>	<u>Goals (Percent for Minority Female participation for each trade</u>
Clark County, NV	Until further notice	13.9	6.9
Esmarelda, Lincoln, Mye Counties, NV; Beaver, Garfield, Iron, Kane & Wash- ington Counties, UT	"	12.6	6.9
Washoe County, NV	"	8.2	6.9
Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey & White Pine Counties NV, Carson City NV	"	9.2	6.9

STATE OF HAWAII

<u>Area Covered</u>	<u>Timetables</u>	<u>Goals (Percent for Minority participation for each trade</u>	<u>Goals (Percent for Minority Female participation for each trade</u>
Honolulu County, HI	Until Further Notice	69.1	6.9
Hawaii, Kauai, Maui & Kalowao Counties	"	70.4	6.9

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of his projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project, for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- (3) The contractor shall provide written notification to the Director, OFCCP, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- (4) As used in this Notice and in the contract resulting from this solicitation, the "covered area" is the one or more geographical areas indicated under Paragraph 1a(2) above.

b. Contractor/Subcontractor Reporting - 41 CFR 60-1.7.

(1) **Monthly Utilization Reports (SF-257).** Monthly Utilization Reports (SF 257) may be required to be submitted to the area office of the OFCCP. This requirement applies to contracts to be performed in areas designated by the Department of Labor. Contractors should contact the area office of the Department of Labor to see if this report is required.

(2) **Employer Information Report (SF 100).** Contractors/subcontractors working on federally-assisted projects are required to file with the sponsor annually, on or before March 31, complete and accurate reports on Standard Form 100 (Employer Information Report, EEO-1). The first such report is required within 30 days after award unless the contractor/subcontractor has submitted such a report within 12 months preceding the date of award (the FAA or the Department of Labor can designate other intervals). This form is normally furnished based on a mailing list, but can be obtained from the Equal Employment Opportunity Commission (EEOC) - Survey Division, 2401 E St., NW, Washington, D.C. 20507 or by calling (202) 634-6750. The report is required if a contractor or subcontractor meets all of the following conditions:

(i) **Nonexempt.** If contractors/subcontractors are not exempt based on 41 CFR 60-1.5;

(ii) **Number of Employees.** Has 50 or more employees;

(iii) **Dollar Level.** Has a contract or subcontract amounting to \$50,000 or more; and

(iv) **Contractor/Subcontractor.** Is a prime contractor or first tier subcontractor. Some subcontractors below the first tier who work at the site are required to file if they meet the above requirements.

c. The successful bidder will be required to submit a Certification of Nonsegregated Facilities prior to award of the contract (\*), and to notify prospective subcontractors of the requirement for such a certification where the subcontract exceeds \$10,000. Samples of the certification and the notice to subcontractors appear in the specifications.

2. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246, as amended).

a. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer Identification Number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- (4) "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the FAR East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan native (all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- b. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, he shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

- c. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, his affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with his obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which he has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the Plan's goals and timetables.
- d. The contractor shall implement the specific affirmative action standards provided in paragraphs 2g(1) through (16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which he has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting his goals in each craft during the period specified.
- e. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the contractor's obligations under these specifications, Executive 11246, as amended, or the regulations promulgated pursuant thereto.

- f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- g. The contractor shall take specific affirmative actions to ensure Equal Employment Opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon his effort to achieve maximum results from his actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or his unions have employment opportunities available, and maintain a record of the organization's responses.
  - (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, minority or female referral from a union, a recruitment source or community organization, and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

- (4) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet his obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under paragraph g(2) above.
- (6) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs, and requesting their cooperation in assisting the contractor in meeting his EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (8) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- (9) Direct his recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable provide after school, summer and vacation employment to minority and female youth both on-site and in other areas of a contractor's work force.
- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.
- h. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations under paragraphs g(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of his obligations under paragraphs g(1) through (16) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet his individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
- i. A single goal for minorities and a separate single goal for women have been established. The contractor however, is required to provide Equal Employment Opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved his goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- j. The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person, because of race, color, religion, sex, or national origin.

- k. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended.
- l. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- m. The contractor, in fulfilling his obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g of these specifications, so as to achieve maximum results from his efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- n. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- o. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977, and the Community Development Block Grant Program).

3. Requirements Under The Disadvantaged Business Enterprise Program.

- a. General. Executive Order 11625 required Federal agencies to develop plans and programs to encourage minority business enterprises. The DOT regulation implementing this mandate is 49 CFR Part 23, Participation by Minority Business Enterprise in Department of Transportation Programs. Until May 23, 1988, sponsors complied with the Minority Business Enterprise (MBE) subparts of the regulation. With the passage of the Airport and Airway Safety and Capacity Expansion Act of 1987 (see section 105(f), amending section 505(d) of the Airport and Airway Improvement Act and amendment of Subpart D of the implementing regulations, 49 CFR Part 23) and effective on May 23, 1988, sponsors now comply with the Disadvantaged Business Enterprise (DBE) subpart of the regulation (Subpart D). Disadvantaged Business Enterprise (DBE) means a small business concern that is owned (51%) and controlled by one or more socially and economically disadvantaged individuals, including, for purposes of this definition, women. Other legal authorities which support the DBE rule in relation to the FAA's grant program are Title VI of the Civil Rights Act of 1964, Sections 511(a) and 520 of the Airport and Airway Improvement Act of 1982, as amended, and Executive Orders 12138 and 12432.
- b. Applicability. All sponsors are required, as a condition of project approval, to assume certain DBE obligations as set forth in 49 CFR Part 23. In addition, there is passed onto contractors a responsibility to make good faith efforts to meet the DBE participation goals contained in the sponsor's bid solicitations.
- c. Policy. It is the policy of the FAA that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 23 apply to this contract.
- d. DBE Obligation. The contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum

## **Appendix 5**

opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of FAA assisted contracts.

- e. Failure to carry out the requirements set forth above shall constitute a breach of contract. After notification, this may result in termination of the contract by the sponsor or such remedy as the sponsor deems appropriate.

**BIDDER'S STATEMENT ON PREVIOUS CONTRACTS**  
**SUBJECT TO EEO CLAUSE**

The Bidder shall complete the following statement by checking the appropriate blanks:

The Bidder has \_\_\_\_\_ has not \_\_\_\_\_ participated in a previous contract subject to the equal opportunity clause prescribed by Executive Order 11246, as amended, of September 24, 1965.

The Bidder has \_\_\_\_\_ has not \_\_\_\_\_ submitted all compliance reports in connection with any such contract due under the applicable filing requirements; and that representations indicating submission of required compliance reports signed by proposed subcontractors will be obtained prior to award of subcontracts.

If the Bidder has participated in a previous contract subject to the equal opportunity clause and has not submitted compliance reports due under applicable filing requirements, the Bidder shall submit a compliance report on Standard Form 100, "Employee Information Report EEO-I" prior to award of the contract (\*).

**NOTE: Failure to complete the blanks may be grounds for rejecting the bid.**

\_\_\_\_\_  
 (Name and Title of Signer)

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

Company Name \_\_\_\_\_

Business Address \_\_\_\_\_

\_\_\_\_\_

Certification of Nonsegregated Facilities (Contractors/Subcontractors).

(A Certification of Nonsegregated Facilities must be submitted prior to award of a contract or subcontract (\*) exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause).

The federally-assisted construction contractor certifies that he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies that he will not maintain or provide, for his employees, segregated facilities at any of his establishments and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this Certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The federally-assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that he will retain such certifications in his files.

Certification - The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
(Name and Title of Signer)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Company Name \_\_\_\_\_

Business Address \_\_\_\_\_  
\_\_\_\_\_

**NOTE:** The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**Assurance of Disadvantaged Business Enterprise Participation**

To meet the mandated requirements of the United States Department of Transportation, 49 CFR Part 23, the assurance below shall be signed by the bidder and submitted prior to award of the contract (\*).

**NOTE:** The bidder's execution of the signature portion of this proposal shall also constitute execution of this assurance.

**Bidder's Assurance of Compliance With  
Title 49 CFR Part 23 Relating To  
Disadvantaged Business Enterprise Participation**

The bidder hereby gives assurance pursuant to the requirements of Title 49 CFR Part 23 that bidder has made a reasonable effort to meet the goals for Disadvantaged Business Enterprise participation specified for the contract for which this proposal is submitted and that bidder, if the contract is awarded to bidder, will have a DBE participation of (\*\*) percent of the amount of this bid. Bidder further gives assurance that bidder will submit the documentation required by said Regulations and the contract specifications, including the Listing of Disadvantaged Business Enterprises with which the bidder will subcontract if the contract is awarded and if bidder is unable to meet the contract goals for DBE participation, of the steps bidder has taken to obtain DBE participation.

\_\_\_\_\_  
(Name and Title of Signer)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Company Name

\_\_\_\_\_.

Business Address

\_\_\_\_\_.

\_\_\_\_\_.

(\*\*) Bidder shall insert the percentage for DBE participation even if the percentage is less than the contract goal.

SUSPENSION AND DEBARMENT REQUIREMENTS FOR ALL CONTRACTS OVER \$25,000  
49 CFR PART 29

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

(Name and Title of Signer)

Signature

Date \_\_\_\_\_

Company Name

**Business Address**

SAMPLE LANGUAGE FOR DBE REQUIREMENTS  
(49 CFR 23.45 (h))

The bidder shall make good faith efforts, as defined in Appendix A of 49 CFR Part 23, Regulations of the Office of the Secretary of Transportation, to subcontract \_\_\_\_\_ percent of the dollar value of the prime contract to small business concerns owned and controlled by socially and economically disadvantaged individuals (DBE). In the event that the bidder for this solicitation qualifies as a DBE, the contract goal shall be deemed to have been met. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The apparent successful bidder will be required to submit information concerning the DBE's that will participate in this contract. The information will include the name and address of each DBE, a description of the work to be performed by each named firm, and the dollar value of the contract. If the bidder fails to achieve the contract goal stated herein, it will be required to provide documentation demonstrating that it made good faith efforts in attempting to do so.

**NOTE:** A bid that fails to meet these requirements may be considered grounds for rejecting the bid.

TRADE RESTRICTION CLAUSES TO BE INCLUDED IN ALL SOLICITATIONS,  
CONTRACTS, AND SUBCONTRACTS

The contractor or subcontractor, by submission of an offer and/or execution of contract, certifies that it:

a. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or a national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the project, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract at no cost to the Government.

Further, the contractor agree that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the contractor, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract or subcontract for default at no cost to the Government.

## Appendix 11

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(Name and Title of Signer)

Signature

Date \_\_\_\_\_

Company Name

**Business Address**

**BUY AMERICAN - STEEL AND MANUFACTURED  
PRODUCTS FOR CONSTRUCTION CONTRACTS**

The Contractor agrees that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, and defined in paragraph a below.

a. The following terms apply to this clause:

(1) Steel and manufactured products. As used in this clause, steel and manufactured products include (1) those produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States.

(2) Components. As used in this clause, components means those articles, materials, and supplies incorporated directly into steel and manufactured products.

(3) Cost of Components. This means the costs for production of the components, exclusive of final assembly labor costs.

(Name and Title of Signer)

Signature

Date \_\_\_\_\_

Company Name

**Business Address**